

FILED

DEC 27 2017

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
CLARKSBURG

U.S. DISTRICT COURT-WVND  
CLARKSBURG, WV 26301

SCOTT T. BALLOCK

Plaintiff,

Case No.: 1:17-CV-52  
(JUDGE KEELEY)

v.

ELLEN RUTH COSTLOW,  
STATE TROOPER MICHAEL KIEF,  
STATE TROOPER RONNIE M. GASKINS, and  
STATE TROOPER CHRIS BERRY,

Defendants.

**REPORT AND RECOMMENDATION**

On December 6, 2017, the undersigned entered a Report and Recommendation on the Defendants' motions to dismiss directing Plaintiff, *inter alia*, to amend his Complaint as to the severity of the distress suffered, pursuant to Plaintiff's ninth claim for Intentional Infliction of Emotional Distress, within fourteen (14) days. (ECF No. 48). On December 20, 2017, Plaintiff filed additional allegations that:

223. As a result of the conduct of the defendants, and the events and consequences caused by that conduct, [Plaintiff] has suffered severe emotional distress which has resulted in:

- a. Multiple years of debilitating distress due to fear and anxiety regarding the investigation related to the false charges;
- b. Pain, suffering and humiliation associated with the unjust and wrongful termination of his employment and his career as an FBI agent as a result of the conduct of defendants;
- c. Suffering from humiliation and embarrassment due to false claims of criminal conduct, including false assertions of abuse and threatening conduct toward his then-wife [Defendant Costlow];
- d. Emotional trauma caused by having to raise his children during the events caused by Defendants;
- e. Anxiety and suffering caused by the need to find new employment and to provide for his children;
- f. Resulting depression and anxiety;
- g. Loss of sleep, resulting in the need for medication;

- h. Necessary visits to medical professionals who have prescribed medications to address the emotional trauma, depression and distress suffered by [Plaintiff], including suicidal thoughts;
- i. Anxiety and emotion driven effects on Ballock's weight;
- j. Development of involuntary tics and physical effects from the constant stress.

(ECF No. 49 at 29-30).

The undersigned finds that Plaintiff has now pled severity of distress sufficient to satisfy Federal Rule of Procedure 8(a)(2). See ECF No. 48 at 27-31). Accordingly, Defendants' motions to dismiss as to Plaintiff's claim for Intentional Infliction of Emotional Distress is properly **DENIED**.

Any party may, within fourteen (14) days after being served with a copy of this Report and Recommendation, file with the Clerk of the Court written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection. A copy of such objections should also be submitted to the Honorable Irene M. Keeley, United States District Judge. Failure to timely file objections to the Report and Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such report and recommendation. 28 U.S.C. § 636(b)(1); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); Thomas v. Arn, 474 U.S. 140 (1985).

The Clerk of the Court is **DIRECTED** to provide a copy of this Report and Recommendation to counsel of record.

Respectfully submitted this 27<sup>th</sup> day of December, 2017.



MICHAEL JOHN ALOI  
UNITED STATES MAGISTRATE JUDGE